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Security Council

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Draft resolution

The Security Council,

Reaffirming its resolutions 827 (1993) of 25 May 1993, 1166 (1998) of 13 May 1998, 1329 (2000) of 30 November 2000, 1411 (2002) of 17 May 2002, 1431 (2002) of 14 August 2002, 1481 (2003) of 19 May 2003, 1503 (2003) of 28 August 2003, 1534 (2004) of 26 March 2004 and of 1597 (2005) of 20 April 2005,

Having considered the proposal made by the President of the International Tribunal for the Former Yugoslavia that the Secretary-General at the request of the President appoint reserve judges from among the *ad litem* judges elected in accordance with Article 13 *ter*, to be present at each stage of a trial to which they have been appointed and to replace a judge if that judge is unable to continue sitting,

Convinced of the advisability of allowing the Secretary-General to appoint reserve judges to specific trials at the International Tribunal for the Former Yugoslavia when so requested by the President of the Tribunal,

Acting under Chapter VII of the Charter of the United Nations,

1. *Decides* to amend article 12 and article 13 *quater* of the Statute of the International Tribunal for the Former Yugoslavia and to replace those articles with the provisions set out in the annex to this resolution;

2. *Decides* to remain seized of the matter.

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Annex

Article 12

Composition of the Chambers

1. The Chambers shall be composed of sixteen permanent independent judges, no two of whom may be nationals of the same State, and a maximum at any one time of twelve *ad litem* independent judges appointed in accordance with article 13 *ter*, paragraph 2, of the Statute, no two of whom may be nationals of the same State.

2. Three permanent judges and a maximum at any one time of nine *ad litem* judges shall be members of each Trial Chamber. Each Trial Chamber to which *ad litem* judges are assigned may be divided into sections of three judges each, composed of both permanent and *ad litem* judges, except in the circumstances specified in paragraph 5 below. A section of a Trial Chamber shall have the same powers and responsibilities as a Trial Chamber under the Statute and shall render judgement in accordance with the same rules.

3. Seven of the permanent judges shall be members of the Appeals Chamber. The Appeals Chamber shall, for each appeal, be composed of five of its members.

4. A person who for the purposes of membership of the Chambers of the International Tribunal could be regarded as a national of more than one State shall be deemed to be a national of the State in which that person ordinarily exercises civil and political rights.

5. The Secretary-General may, at the request of the President of the International Tribunal appoint, from among the *ad litem* judges elected in accordance with Article 13 *ter*, reserve judges to be present at each stage of a trial to which they have been appointed and to replace a judge if that judge is unable to continue sitting.

6. Without prejudice to paragraph 2 above, in the event that exceptional circumstances require for a permanent judge in a section of a Trial Chamber to be replaced resulting in a section solely comprised of *ad litem* judges, that section may continue to hear the case, notwithstanding that its composition no longer includes a permanent judge.

Article 13 *quater*

Status of *ad litem* judges

1. During the period in which they are appointed to serve in the International Tribunal, *ad litem* judges shall:

(a) Benefit from the same terms and conditions of service mutatis mutandis as the permanent judges of the International Tribunal;

(b) Enjoy, subject to paragraph 2 below, the same powers as the permanent judges of the International Tribunal;

(c) Enjoy the privileges and immunities, exemptions and facilities of a judge of the International Tribunal;

(d) Enjoy the power to adjudicate in pre-trial proceedings in cases other than those that they have been appointed to try.

2. During the period in which they are appointed to serve in the International Tribunal, *ad litem* judges shall not:

(a) Be eligible for election as, or to vote in the election of, the President of the Tribunal or the Presiding Judge of a Trial Chamber pursuant to article 14 of the Statute;

(b) Have power:

(i) To adopt rules of procedure and evidence pursuant to article 15 of the Statute. They shall, however, be consulted before the adoption of those rules;

(ii) To review an indictment pursuant to article 19 of the Statute;

(iii) To consult with the President in relation to the assignment of judges pursuant to article 14 of the Statute or in relation to a pardon or commutation of sentence pursuant to article 28 of the Statute.

3. Notwithstanding, paragraphs 1 and 2 above, an *ad litem* judge who is serving as a reserve judge shall, during such time as he or she so serves:

(a) Benefit from the same terms and conditions of service mutatis mutandis as the permanent judges of the International Tribunal;

(b) Enjoy the privileges and immunities, exemptions and facilities of a judge of the International Tribunal;

(c) Enjoy the power to adjudicate in pre-trial proceedings in cases other than those that they have been appointed to and for that purpose to enjoy subject to paragraph 2 above, the same powers as permanent judges.

4. In the event that a reserve judge replaces a judge who is unable to continue sitting, he or she will, as of that time, benefit from the provisions of paragraph 1 above.